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Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 543

Case No. 568: MATEU

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-President; Mr. Ioan Voicu;

Whereas, on 20 June 1990, Juan Mateu, a staff member of the United Nations Office at Geneva, filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed his application on 25 October 1990;

Whereas in his application the Applicant requested the Tribunal to order reimbursement of the education levy paid by him to the Canton of Geneva for the school year 1985-1986 in respect of his son Jean;

Whereas the Respondent filed his answer on 12 April 1991;

Whereas the facts in the case are as follows:

The question of reimbursement of the education levy imposed by the Canton of Geneva was considered by the International Civil Service Commission (ICSC) at its twenty-second session, in July 1985, in its report on "Remuneration of the General Service and related categories: Survey of best prevailing conditions of service in Geneva" (ICSC/22/R.24). The relevant parts of the report read as follows:

"64. Since 1983 the Canton of Geneva has imposed a levy for education costs. This levy is selective in nature and has not been applied across-the-board. The levy has been imposed on all those with children attending cantonal secondary schools, or university, but who do not pay taxes to the Canton. The levy is only imposed in respect of children over 15 years of age and it is intended to cover the cost of some of the services rendered by the Canton to non-tax payers. The levy also varies by the residential status of the family, being higher for non-residents of the Canton of Geneva. The amounts of the levy are as follows:

	Geneva resident	Non-resident
	(Swiss francs per annum)	
Secondary school years 15-18	480	480
University years 19-25	600	1 000

65. Staff in the United Nations organizations, who are exempted from paying Swiss taxes, have to pay this levy for education costs which tax payers do not. The only United Nations common system employees who would not have to pay this levy would be those who have a spouse who is an income earner within the Geneva tax system and who has claimed the children as dependants. Employers surveyed have not adjusted their employment conditions to account for the education levy. For the most part they employ persons either subject to taxes levied by the Canton of Geneva or not requiring education services from the Canton. As a result of the survey findings no adjustment would be warranted to cover the effect of the education levy.

66. Some staff in the General Service category may now have difficulty in covering the education levy. This may be particularly true of staff in the lower levels of the General Service category. For example, a staff member at grade G-3, step XI, non-resident of Geneva, with one child at university and two in secondary school, would have to find 3.8 per cent of salary to cover these costs. While the example given shows a 3.8 per cent cost for a G-3 staff member, a staff member in a similar situation at G-7, step V would be required to find 3.4 per cent of salary to cover the educational levy and a G-7 staff member with one child at secondary school would only need 0.8 per cent of salary to cover the levy. No account has been taken of this levy in the tax calculations used to derive net salaries from the outside gross.

...

89. Concerning the problem of the education levy the Commission decided to provide guidance for consideration by the executive heads of the Geneva-based organizations in the development of a common solution. The solution eventually developed by the executive heads for uniform application to all staff should encompass the following features:

(a) Relief should only be provided for the children of the General Service and related categories staff whose children are attending public schools;

(b) Any relief provided should give due recognition to the fact that parents are responsible for some portion of expenses relating to the education of their children;

(c) Any solution eventually agreed upon should be temporary in nature;

(d) Relief could be provided to staff on the basis that 25 per cent of the school levy should be borne by the staff member and 75 per cent should be paid by the organizations."

On 11 November 1985 the United Nations Office at Geneva accordingly issued Information Circular No. 3277 on "Reimbursement of the education levy" (IC/Geneva/3277). Paragraphs 2 to 4 of the circular read as follows:

"2. Based on an agreement reached, in the course of consultations among the organizations with staff in Geneva, the Secretary-General has decided that reimbursement of the education levy applied by the Canton of Geneva will begin with the 1985-1986 school year. In accordance with the guidance provided by ICSC, the reimbursement shall amount to 75 percent of the levy paid by staff members in the General Service and related categories for their dependent children. Education levies paid for attendance at a secondary school or a university-level institution shall be subject to reimbursement, except for the flat fee of 55 Swiss Francs per semester payable for all university-level students, which shall be borne by the staff member concerned.

3. The current annual amounts of the education levy subject to reimbursement are indicated below broken down by educational level and place of residence, with the corresponding amounts reimbursable by the United Nations for a complete school year.

Educational level	Education Levy		Reimbursable by the organization	
	Geneva resident	Non-resident	Geneva resident	Non-resident
	(in Swiss francs per School year)		(in Swiss francs per School year)	
Secondary School	480	480	360	360
University	600	1,000	450	750

4. General Service and language teaching staff with dependent children who are required to pay the education levy should submit a claim for reimbursement to the Personnel Administration Section. Such requests should be submitted once for the entire school year and be accompanied by evidence of actual payment of the education levy. Upon ascertaining the dependent status of the children for the period covered by the claim, the Personnel Administration Section shall forward the approved claim to the Finance Service for payment. Reimbursement shall be made on a pro-rated basis for staff on a fixed-term, probationary or permanent appointment whose services do not cover the entire school year, or for partial-year attendance at an educational institution for which the education levy is payable."

On 26 May 1986 the Applicant, a locally recruited Budget Assistant at the G-7 level, submitted a request for reimbursement of 450 Swiss francs representing 75 per cent of the education levy for the second semester of 1985 and first semester of 1986 in respect of his son Jean, who was then a student in the University of Geneva and who had reached the age of 21 years on 23 December 1982. In the beginning of 1987, the Applicant's claim was returned to him by the Personnel Officer, Allowances and Benefits Unit, who informed him that as his son Jean, who was then over 21 years old, was no longer considered a dependent child, the education levy being claimed could not be reimbursed.

On 25 February 1987 the Applicant sent a letter to the Secretary-General requesting a review of the decision not to reimburse the education levy in respect of his son Jean. On 10 June 1987, having received no reply from the Secretary-General, he lodged an appeal with the Joint Appeals Board at Geneva.

The Joint Appeals Board submitted its report on 13 March 1990. The considerations, conclusions and recommendations of the Board read as follows:

"Considerations and Conclusions

...

Merits

23. The Panel, after having considered the circumstances surrounding this case, deliberated on the final decision taken by the Administration to deny partial reimbursement to the Appellant of an education levy amounting to Swiss francs 600.-. From the submitted documentation, it appeared that the Administration's denial of reimbursement was based on the provisions of Information Circular IC/Geneva/3277 dated 11 November 1985. More particularly, this denial was made as the Appellant's son was found to have exceeded 21 years of age when the reimbursement was claimed and thus he could no longer be considered to be the Appellant's dependant. Dependency, as defined in staff rule 103.24, was the Administration's main criterion for reimbursement. It was found firmly embodied in the provisions of document IC/Geneva/3277 which regulates reimbursements of the education levy to Geneva-based staff members and was promulgated following an ICSC recommendation made on this subject. The Panel concludes therefore that the Administration's refusal to honour the Appellant's claim is formally correct.

24. The Panel then considered the Appellant's contentions in more detail, specifically that the Administration's denial of reimbursement was not in conformity with staff rule 103.20 foreseeing that staff members can receive education grants in respect of children up to the age of 25 years. The Panel, however, considers that this provision of the staff rules cannot be applied in this case. The pertinent staff rule provides sufficient and clear evidence that education grant payments can be made solely to internationally-recruited staff. As the Appellant was recruited locally, the Panel concludes that he cannot claim any benefits available under this staff rule. His reference thereto is not valid and consequently cannot be sustained.

25. The Panel noted the Appellant's reference to an ICSC decision on the partial reimbursement of an education levy for the staff members concerned. Although, in the strict sense of the term, the ICSC did not provide the Administration with a decision but with a recommendation only, the

Panel thought it useful to consider also the Administration's interpretation of this recommendation. The review of the related ICSC documentation revealed that the ICSC's intention was obviously to provide, outside the education grant mechanism, assistance to the Geneva-based staff in compensation for a local education levy imposed for children up to the age of 25 years. This ICSC intention emerges from document ICSC/22/R.24, dated 6 August 1985, which in paragraph 64 sets out the age groups as being from 15 to 18 for children at secondary school, and from 19 to 25 for those at university. Clearly this provision was not followed when the Administration established its reimbursement policy and issued its own policy document IC/Geneva/3277. The Panel concludes that this selective application of an original feature of the ICSC recommendation is open to question as it is apparent that the original intention was to provide 'relief for the children of General Service staff and related categories' between 15 to 25 years of age.

Recommendations

26. From the foregoing, the Panel, while accepting that the contested administrative decision follows necessarily from the existing policy, nevertheless recommends that in line with the original social intent of the ICSC recommendation, a review be undertaken with the aim of extending to 25 years the age limit up to which the education levy can be reimbursed. The Panel further recommends that, in the present case, favourable consideration be given to retroactive reimbursement."

On 22 March 1990 the Acting Under-Secretary-General for Administration and Management informed the Applicant that, having re-examined his case in the light of the Board's report, the Secretary-General had decided to maintain the contested decision. On 25 October 1990 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The ICSC decision does not limit the schooling age for students.

2. The ICSC indicates in its report that the levy was imposed by the Canton of Geneva for "education costs" which, under staff rule 103.20, are reimbursable until the child reaches the age of 25 years even if the dependency allowance in respect of that child is discontinued upon his or her reaching the age of 21 years. Hence the application of staff rule 103.24 is irrelevant and unjust to the General Service staff.

3. The Administration's refusal to reimburse the education levy in respect of children over the age of 21 years contradicts the ICSC decision which specifies that the solution eventually developed by the executive heads is meant for "uniform application to all staff" and should encompass the "relief" feature of the reimbursement.

Whereas the Respondent's principal contentions are:

1. Reimbursement of the education levy is governed by an information circular promulgated after consultation and agreement with the staff in the light of ICSC recommendations. The circular binds the staff.

2. The ICSC specifically stated that its discussion of reimbursement of the education levy was a recommendation designed as a guideline to Executive Heads for the elaboration of rules to govern reimbursement.

The Tribunal, having deliberated from 14 October to 7 November 1991, now pronounces the following judgement:

I. The A[illegible]t, a staff member of the United Nations Office at Geneva, requests the Tribunal to order the reimbursement of the education levy paid by him to the Canton of Geneva for the school year 1985-1986 in respect of his son Jean, a student at the University of Geneva, who was then over 21 years old. Despite the favourable recommendation of the Joint Appeals Board, reimbursement was denied by a decision of the Secretary-General, which was transmitted to the Applicant on 22 March 1990 by the Acting Under-Secretary-General for Administration and Management.

II. The Respondent applied to the Applicant the provisions of Information Circular IC/Geneva/3277 which provides that reimbursement of the education levy imposed by the Canton of Geneva for children up to the age of 25 years cannot be made to General Service staff whose children are over 21 years old and are no longer considered to be their dependants.

III. The Tribunal finds that the circular does not contravene any provision of the Staff Rules and Regulations and that it was properly applied to the

Applicant. In particular, the Applicant, who was locally recruited, cannot invoke the analogy of the education grant received by internationally recruited staff in respect of children up to the age of 25 years in accordance with staff rule 103.20.

IV. The Applicant, however, invokes the conclusions of 13 March 1990 of the Joint Appeals Board. The Board deemed the International Civil Service Commission (ICSC) to have considered, in its report ICSC/22/R.24, that relief should be provided to Geneva-based staff in respect of the local education levy imposed on them for children up to the age of 25 years.

V. The Tribunal does not deem it necessary to comment on how the ICSC recommendation should be interpreted. In this instance, ICSC did not exercise decision-making power, but merely made a recommendation which the Administration, after review, was not required to follow.

VI. Lastly, the Tribunal finds that the policy set by the Administration with regard to reimbursement of the education levy was not based solely on the manner in which the ICSC recommendation was to be interpreted. The Tribunal concludes that the Applicant cannot claim that the Administration, in applying what the Applicant regards as an erroneous interpretation of the ICSC recommendation, had no legal basis for its decision.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Roger PINTO
President

Ahmed OSMAN
Vice-President

Ioan VOICU
Member

New York, 7 November 1991

Jean HARDY
Acting Executive Secretary